



DEPARTMENT OF COMMERCE

International Trade Administration

[C-557-822]

Utility Scale Wind Towers from Malaysia: Final Affirmative Countervailing Duty

Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from Malaysia.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Nathan James, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5305

SUPPLEMENTARY INFORMATION:

Background

On March 25, 2021, Commerce published the *Preliminary Determination* in this investigation in the *Federal Register*.¹ The petitioner in this investigation is the Wind Tower Trade Coalition. In addition to the Government of Malaysia, the mandatory respondent in this investigation is CS Wind Malaysia Sdn Bhd (CS Wind).

A summary of the events that occurred since Commerce published the *Preliminary Determination* is found in the Issues and Decision Memorandum, which is hereby adopted by

¹ See *Utility Scale Wind Towers from Malaysia: Preliminary Affirmative Countervailing Duty Determination*, 86 FR 15887 (March 25, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

this notice.² The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Period of Investigation

The period of investigation is January 1, 2019, through December 31, 2019.

Scope of the Investigation

The products covered by this investigation are wind towers from Malaysia. For a complete description of the scope of this investigation, *see* Appendix I.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.³

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs by parties in this investigation, are discussed in the Issues and Decision Memorandum. For a list of the issues raised by parties, and to which we responded in the Issues and Decision Memorandum, *see* Appendix II of this notice.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce determines that there is a

² See Memorandum, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Utility Scale Wind Towers from Malaysia," dated concurrently with this notice (Issues and Decision Memorandum).

³ See Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Malaysia: In Lieu of Verification Questionnaire," dated March 25, 2021.

subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.⁴ For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

In making this final determination, Commerce is relying, in part, on facts otherwise available pursuant to section 776(a) of the Act. For a full discussion of our application of facts available, *see* the *Preliminary Determination*⁵ and Comment 3 of the accompanying Issues and Decision Memorandum.

Changes Since the *Preliminary Determination*

Based on our review and analysis of the record and the comments received from parties, we made certain changes to the countervailable subsidy rate calculation for CS Wind. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 705(c)(5)(A) of the Act provides that in the final determination, Commerce shall determine an all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis*, or based entirely under section 776 of the Act.

In this investigation, Commerce calculated an individual estimated countervailable subsidy rate for CS Wind that is not zero, *de minimis*, or based entirely on facts otherwise available. Accordingly, we have assigned CS Wind’s subsidy rate to all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.⁶

Final Determination

Commerce determines that the following countervailable subsidy rates exist:

⁴ *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁵ *See* Memorandum, “Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Utility Scale Wind Towers from Malaysia,” dated March 19, 2021 at 7.

⁶ CS Wind reported its sales values as public information.

| Company | Subsidy Rate (percent) |
|--------------------------|-----------------------------------|
| CS Wind Malaysia Sdn Bhd | 6.42 |
| All Others | 6.42 |

Disclosure

Commerce intends to disclose to interested parties its calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the *Federal Register*, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section that were entered, or withdrawn from warehouse, for consumption on or after March 25, 2021, the date of publication of the *Preliminary Determination* in the *Federal Register*.

We are directing CBP to continue to suspend liquidation of all imports of the subject merchandise from Malaysia that were entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. The suspension of liquidation instructions will remain in effect until further notice. We are also directing CBP to collect countervailing duty deposits at the rate described above.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all cash deposits will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its final affirmative determination. Because Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of wind towers from Malaysia no later than 45 days after our final determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 771(i) of the Act, and 19 CFR 351.210(c).

Dated: June 2, 2021.

Christian Marsh,

Acting Assistant Secretary

for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.*, where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.*, flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.*, accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Subsidies Valuation
- V. Use of Facts Available
- VI. Analysis of Programs
- VII. Discussion of the Issues
 - Comment 1: Whether Commerce Should Determine that the Government of Malaysia (GOM) Duty Exemption Program Is Specific on the Basis of Facts Available
 - Comment 2: Whether the GOM Has an Effective System in Place to Track Input Consumption Pursuant to 19 CFR 351.519
 - Comment 3: Whether Commerce Should Revise Its Analysis of the Electricity for Less Than Adequate Remuneration (LTAR) Program
 - Comment 4: Whether Commerce Should Select A Different Tier-One Benchmark to Measure the Adequacy of Remuneration for CS Wind's Land
 - Comment 5: Whether Commerce Should Modify the Denominator Used in its Benefit Calculations
 - Comment 6: Whether Commerce Incorrectly Declined to Initiate an Investigation into the Cut-to-Length (CTL) Plate for LTAR New Subsidy Allegation (NSA)
- VIII. Recommendation

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